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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 103.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE, PLAINTIFF IN ERROR,

vs.

ANDREW POTTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED SEPTEMBER 18, 1888.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 24, 1891.

1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 7th day of September, A. D. 1887, came Andrew Potter, by Teller and Orahood, Esqrs., his attorneys, and filed in said court his complaint and sued out of said court a writ of summons against The Board of County Commissioners of the County of Chaffee.

And the said complaint is in words and figures as follows, to wit:

Complaint.

In the Circuit Court of the United States, District of Colorado.

ANDREW POTTER, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE, Defendant. } Complaint.

Plaintiff complains of the defendant herein, and alleges—

That he is a citizen and resident of the State of Massachusetts; that the said defendant is a municipal corporation organized and existing under the laws of the State of Colorado, and has been so organized and existing since the 9th day of March, 1877; that by the laws of the State of Colorado as they existed in 1877 and

2 until this time the board of county commissioners of this county and of all the counties of the State were authorized to examine and settle all accounts of the receipts and expenses of the county and to examine and settle and allow all accounts chargable against the county, and when so settled to issue county warrants therefor; to build and keep in repair the county buildings, and to insure the same and provide suitable rooms for county purposes; to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where it was not otherwise provided by law.

That on the 1st day of December, 1882, the said defendant caused to be made and executed a bond; which said bond was in general terms as follows, to wit:

No. —. $1,000.

UNITED STATES OF AMERICA, *County of Chaffee, State of Colorado.*

Funding Bond.

(Series A.)

The County of Chaffee, in the State of Colorado, acknowledges itself indebted, and promises to pay to —— —— or bearer, one thousand dollars, lawful money of the United States, for value received, redeemable at the pleasure of said county after ten years, and absolutely due and payable twenty years from the date hereof, at the

office of the treasurer of said county, in the town of Buena Vista, with interest thereon at the rate of eight per cent per annum, payable semi-annually on the first day of March, and the first day of September in each year, at the office of the county treasurer aforesaid, or at the banking-house of Kountze Brothers, in the city of New York, at the option of the holder, upon the presentation and surrender of the annexed coupons as they severally become due.

This bond is issued by the board of county commissioners of said Chaffee county, in exchange at par for valid floating indebtedness of the said county, outstanding prior to August 31st, 1882, under and by virtue of, and in full conformity with the provisions of an act of the General Assembly of the State of Colorado, entitled "An act to enable the several counties of the State to fund their floating indebtedness" approved February 21st, 1881, and it is hereby certified that all the requirements of law have been fully complied with by the proper officers in the issuing of this bond. It is further certified that the total amount of this issue does not exceed the
3 limit prescribed by the constitution of the State of Colorado, and that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of the said county of Chaffee, voting on the question at a general election duly held in said county, on the seventh day of November, A. D. 1882.

The bonds of this issue are comprised in three series designated "A" "B" and "C" respectively; the bonds of series "A" being for the sum of one thousand dollars each, those of series "B" for the sum of five hundred dollars each, and those of series "C" for the sum of one hundred dollars each. This bond is one of series "A."

The faith and credit of the county of Chaffee are hereby pledged for the punctual payment of the principal and interest of this bond.

In testimony whereof, the board of county commissioners of the said county of Chaffee, have caused this bond to be signed by their chairman, countersigned by the county treasurer and attested by the county clerk under the seal of the county, this first day of December, A. D. 1882.

____ ____,
Chairman Board of County Commissioners.

Attest:

____ ____,
County Clerk.

[COUNTY SEAL.]

Countersigned:

____ ____,
County Treasurer.

And this plaintiff further says that to each of said bonds was attached coupons for the semi-annual interest accruing on said bond; which said coupon was in form as follows, to wit:

$—. $—.

THE COUNTY OF CHAFFEE, *in the State of Colorado,*

will pay the bearer — dollars at the office of the county treasurer, in the town of Buena Vista, or at the banking-house of Kountz Brothers, in the city of New York, on the first day of ——, being six months' interest on funding bond.

No. —. Series —. E. B. JONES,
County Treasurer.

And that there was a sufficient number of coupons attached to each of said bonds in form as above set forth to provide for the payment of all of the interest on said bonds, and that said coupons were numbered consecutively from one to forty-one, inclu-
4 sive, commencing with the coupon for the interest first due, and that before said bonds were issued and delivered as aforesaid they were duly registered in the office of the State auditor, as required by said act; that the blanks in said coupons were filled with the several dates at which the interest became due and the amount of interest due.

This plaintiff further says that on the 1st day of December, 1882, the said defendant, The Board of County Commissioners of the County of Chaffee, made an exchange with the parties then holding the warrants of said county which had before that time been issued to them in accordance with the statutes in such cases made and provided and in settlement of claims presented by them against said county for the bonds of said county, with coupons attached as above specified; that in every case where such warrants were presented, they being received at par for the face and interest thereon, they were exchanged for the bonds of said county in form as above set forth, and in such cases the blanks were filled out with the name of the party receiving such bonds or exchanging such warrants and the blank fort he place of payment filled in as the banking-house of Kountz Bros., in the city of New York, and thereupon these bonds were signed by the chairman of the board of county commissioners, to wit, T. J. Briscoe, and countersigned by the county treasurer of said county, to wit, E. B. Jones, and attested by the county clerk of the county of Chaffee with the seal of said county, to wit, James H. Johnston, and the said coupons attached to said bonds were also filled out, stating the place in the city of New York as the banking-house of Kountz Brothers at which the same were payable,
5 and stating also the number of the funding bond and the series to which it was attached, and each coupon was signed by E. B. Jones, who was then county treasurer of said county of Chaffee.

This plaintiff further says that at the time of the issuing of said bonds above set forth the amount of said bonds had theretofore been authorized by a vote of the qualified voters to be exchanged for the warrants, and that amount was spread upon the records of the said county of Chaffee, as provided for by the said act in said bond referred to, to wit, an act entitled "An act to enable the sev-

eral counties of the State to fund their floating indebtedness," and in all other respects all the terms and conditions of said act were fully complied with.

And this plaintiff further says that in every case where said bonds were issued and delivered to the paye-s therein named, or to any person for them, the parties received such bonds, exchanging for such bonds the said amount in warrants and interest thereon that had theretofore been issued by the said county as above stated.

That the said county of Chaffee from that time, to wit, from the 1st day of December, 1882, and up until the 1st day of September, 1885, paid the interest on said bonds semi-annually, in accordance with the terms of said bond and of the coupons thereon attached; and this plaintiff avers that this defendant on the 1st day of March, 1886, made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and still does refuse to pay said interest due on the said bonds as above mentioned; and the said defendant on the 1st day of September,
1886, also made default in the payment of the interest ex-
6 pressed in the coupons attached to said bonds due and payable on the 1st day of September, 1886, and has ever since that time and still does refuse and neglect to pay the same; and the said defendant on the 1st day of March, 1887, also made default in the interest expressed in coupons attached to said bonds and due on the 1st day of March, 1887, and still does refuse and neglect to pay said interest; and the said defendant on the 1st day of September, 1887, made default of the interest expressed in the coupons attached to said bonds due and payable on the 1st day of September, 1887, and has ever since that time and still does refuse and neglect to pay said interest.

The plaintiff further says that he is the holder and owner of coupons No. 7 formerly attached to bonds numbered 68, 80, 85, 86, 94, and 95, series "A;" also to bonds numbered 114, 115, and 131, series "B," and also to bonds No. 176, 177, and 178, series "C," falling due March 1, 1886.

Also of coupons No. 8 formerly attached to bonds Nos. 1 to 23, both numbers inclusive; 28, 30 to 49, both numbers inclusive; 58, 59, 64, 66, 67, 68, 71, 72, 75, 79, 80, 81, 83, 84, 85, 86, 87, 88, 94, 95, 98, 99, series "A."

Also to bonds numbered 106, 111, 113 to 123, both numbers inclusive; 126, 128, and 131, series "B."

Also to bonds numbered 148, 149, 150, 160, 161, 162, 167, 168, 169, 170 to 194, both numbers inclusive; 197, 198, 199, 200, 203, 204, 213, 214, 217, 218, 219, 221, 222, 225, and 226, series "C," falling due Sept. 1, 1886.

Also of coupons numbered 9 attached to bonds numbered from 1 to 23, both numbers inclusive; 28, 30, 31 to 49, both numbers inclusive; 58, 59, 64, 66, 67, 68, 71, 72, 75, 79, 80, 81, 83, 84, 85, 86,
87, 88, 94, 95, 98, 99, series "A;" also to bonds numbered
7 106, 111, 113 to 123, both numbers inclusive; 126, 128, 131, series "B;" also to bonds numbered 148, 149, 167, 168, 169,

172, 176, 177, 178, 179, 181 to 193, both numbers inclusive; 203, 204, 217, 218, 180, series "C," falling due March 1st, 1887.

Also of coupons numbered 10 attached to bonds numbered from 1 to 11, both numbers inclusive; 14 to 23, both numbers inclusive; 28, 30 to 49, both numbers inclusive; 58, 59, 64, 71, 72, 75, 79, 81, 84, 87, 88, 98, and 99, series "A;" also to bonds numbered 106, 111, 113 to 123, both numbers inclusive; 128, series "B;" also to bonds numbered 148, 149, 167, 168, 169, 172, 176 to 193, both numbers inclusive; 203, 204, 217, 218, series "C," falling due September 1st, 1887, & that he became such holder & owner before the same became due & for a valuable consideration paid by him.

This plaintiff further says that said coupons have been duly presented for payment to the said treasurer of said county and payment thereof duly demanded, and the payment thereof has been refused by the said treasurer and by the said defendant.

This plaintiff further says that there is now due and payable to him as interest mentioned in said coupons the sum of nine thousand one hundred and thirty-two dollars ($9,132) principal and five hundred and sixteen dollars ($516) interest on said several coupons from the respective dates at which they fell due to the 1st day of September, 1887, at the rate of 10 per cent. per annum.

Wherefore plaintiff demands judgment against the defendant for the sum of nine thousand six hundred and forty-eight dollars ($9,648), together with interest on the sum of nine thousand one hundred and thirty-two dollars from the 1st day of Septem-
8 ber, 1887, until the rendition of judgment herein at the rate of 10 per cent. per annum and for the costs.

(Signed) TELLER & ORAHOOD,
Plaintiff's Attorneys.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

Harper M. Orahood, being first duly sworn, on his oath deposes and says that he is one of the attorneys for the plaintiff in the above-entitled action; that said plaintiff is absent from the county of Arapahoe and from the State of Colorado, and is a non-resident of said State and is a resident of the State of Massachusetts, and is therefore unable to make this verification, and therefore affiant makes it on his behalf; that affiant has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters and things which are therein stated on information and belief, and as to those matters and things he believes it to be true.

(Signed) HARPER M. ORAHOOD.

Subscribed and sworn to before me this 6th day of September, 1887.

(Signed) CHARLES M. KENDALL,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsed:) 2193. U. S. C. C. Andrew Potter -*s*. The
9 Board of County Commissioners of the County of Chaffee. Complaint. Filed Sep. 7, 1887. (Signed) William A. Willard, clerk. Teller & Orahood, att'ys for pl'ff.

And the said summons is in words and figures as follows, to wit:

Summons.

UNITED STATES OF AMERICA, } *ss*:
District of Colorado, }

In the Circuit Court of the United States for the District of Colorado.

ANDREW POTTER, Plaintiff, *versus* THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE, Defendant.	Complaint Filed in the Clerk's Office this 7th Day of September, A. D. 1887.

The President of the United States of America to The Board of County Commissioners of the County of Chaffee, Greeting:

You are hereby notified that an action has been brought in said court by Andrew Potter, plaintiff, against you as defendant to recover the sum of $9,648.00, due from you, the said defendant, to the said plaintiff upon certain interest coupons, numbered 7, 8,
10 9, & 10, formerly attached to bonds issued by you, together with interest on the sum of $9,132.00 from Sept. 1st, 1887, at 10% per annum and for costs of suit, as more particularly set forth and described in the complaint filed herein and to which reference is here made.

You are hereby required to appear and demur or answer to the complaint filed in said action in said court within ten days (exclusive of the day of service) after this summons shall be served on you, if such service shall be made within the county of Arapahoe; otherwise within forty days from the day of service; and if you fail so to do the said plaintiff will take judgment against you by default, according to the prayer of the said complaint, for said sum of $9,648.00, interest as aforesaid and costs.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in said district, this 7th day of September, A. D. 1887, and of the Independence of the United States the 112th year.

[Seal U. S. Cir. C't, Dist. of Colo.]

(Signed) WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

Proof of Service.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

SEPTEMBER 16TH, A. D. 1887.

11 I hereby certify that I received the within writ on the — day of ——, A. D. 188–, and that I have personally served the same upon the said defendant, The Board of County Commissioners of Chaffee County, by delivering to E. B. Jones, county clerk and recorder of said county, personally a true copy of the within writ at the time and place as follows: At Buena Vista, county of Chaffee, on the 10th day of September, A. D. 1887.

This writ, therefore, returned executed, as the law directs, this 16th day of September, A. D. 1887.

(Signed) ZEPH. T. HILL, *Marshal,*
By E. C. CURRIER, *Deputy Marshal.*

(Endorsed:) Gen. No. 2193. Circuit court of the United States for the district of Colorado. Andrew Potter, plaintiff, *versus* Chaffee County, defendant. Summons. Filed this 16th day of Sept., A. D. 1887. (Signed) William A. Willard, clerk, by F. W. Tupper, deputy clerk. Teller and Orahood, of Denver, attorneys for plaintiff.

And afterwards and on, to wit, the 1st day of November, A. D. 1887, came the said defendant, by G. K. Hartenstein, Esq., its attorney, and filed in said court and in said cause its answer to the complaint herein.

And the said answer is in words and figures as follows, to wit:

Answer.

12 In the Circuit Court of the United States, District of Colorado.

ANDREW POTTER, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE, Defendant.

Now comes said defendant, and in answer to plaintiff's complaint herein alleges—

That as to whether or not the plaintiff is a citizen or resident of the State of Massachusetts the defendant has not and cannot obtain sufficient knowledge or information upon which to base a belief.

Defendant denies that the amount of said bonds in the complaint mentioned had been authorized by a vote of the qualified voters of said Chaffee county; denies that the amount of bonds in the complaint mentioned had been authorized by a vote of the qualified voters of said county to be exchanged for the warrants of said

county; denies that the issuing of any amount of bonds had been authorized by a vote of the qualified voters of said county or that any amount of bonds had been authorized by a vote of the qualified voters of said county to be exchanged for the warrants of said county.

As to whether or not the plaintiff is the holder and owner of the several coupons in the complaint mentioned, or any of them, the defendant has not and cannot obtain sufficient knowledge or
13 information upon which to base a belief; denies that there is due and payable from the said county of Chaffee to the plaintiff any sum whatever as interest mentioned in the coupons designated in the complaint or any of them; denies that there is any amount due or payable to the plaintiff from the said county of Chaffee as interest or otherwise; and the defendant denies that plaintiff's said claim has been presented to the board of county commissioners of said Chaffee county for audit and allowance before the commencement of this action.

For a second and further defense to this action and to the matters and things alleged and set forth in the plaintiff's complaint the defendant alleges—

That the said bonds and each of them mentioned in the complaint, to which the said coupons in the said complaint designated were formerly attached, were issued or attempted to be issued and the debt thereof contracted or assumed to be contracted by the board of county commissioners of said Chaffee county in direct violation of and contrary to the provisions of section six (6) of article eleven (11) of the constitution of the State of Colorado.

That on the first day of December, A. D. 1882, the date upon which said bonds were issued, the assessed valuation of the taxable property of said county exceeded one million of dollars; that said bonds were not issued or the debt thereof contracted for the purpose of erecting necessary public buildings or for the purpose of making or repairing public roads or bridges, and are therefore null and void, and the interest coupons of said bonds are not a valid claim against said county, and defendant is informed and be-
14 lieves that the plaintiff well knew, when he received said bonds and coupons in his complaint mentioned, that the said bonds had not been issued or the debt thereof contracted for the purpose of erecting necessary public buildings or for the purpose of making or repairing public roads or bridges, and knew that said bonds in the complaint mentioned were null and void for the reasons aforesaid.

For a third and further defense to this action and to the matters and things alleged and set forth in the complaint the defendant alleges—

That the said bonds in the complaint mentioned, to which were formerly attached the several coupons designated in the complaint and upon which this suit is brought, were issued by the said board of county commissioners of said Chaffee county without any consideration valid in law and are null and void, as plaintiff well knew when he received the said coupons.

That said bonds were issued in exchange for warrants issued by the board of county commissioners of said Chaffee county upon the treasurer of said county; that the warrants so exchanged as aforesaid for the bonds, to which were formerly attached the coupons mentioned and designated in the complaint, were illegal and void and issued without authority of law in this, to wit, that at the several times and dates at which the several warrants exchanged for said bonds as aforesaid were issued the assessed valuation of the property of said county exceeded one million of dollars; that the debt contracted by the issuing of said warrants or the debt in lieu of which said warrants were issued was not contracted for the purpose of erecting necessary public buildings or for the purpose of making or repairing public roads or bridges, and the debt of said warrants was contracted and the said warrants issued in violation of and contrary to the provisions of section six (6) of article eleven (11) of the constitution of the State of Colorado; for the reasons aforesaid said warrants were not a valid consideration for said bonds; that the facts aforesaid were well known to the plaintiff when he received said coupons, as defendant is informed and believes.

For a fourth and further defense to plaintiff's cause of action and to the matters and things set forth in the complaint the defendant alleges—

That the said bonds and coupons and each of them specified and set forth in plaintiff's complaint were issued or attempted to be issued and the debt thereof contracted or attempted to be contracted by the said board of county commissioners of said Chaffee county in violation of and contrary to the provisions of section six of article eleven of the constitution of the State of Colorado; that at the time said bonds were issued and delivered to the several payees therein named the aggregate amount of debt which could lawfully be contracted or incurred by said county of Chaffee for all purposes, as prescribed by the aforesaid constitutional provision, had been reached and exceeded by said county in this, to wit: First, that at the time said bonds and each of them were issued or attempted to be issued and delivered the total value of the taxable property of said county of Chaffee was not less than one million of dollars, but was of the value, as assessed in pursuance of the laws of the State of Colorado, of two million six hundred and sixty-eight thousand dollars; second, that at the time said bonds and each of them were issued or attempted to be issued and delivered and the debt thereof contracted or attempted to be contracted the aggregate amount of indebtedness of said county, exclusive of debts contracted before the adoption of the constitution of the State of Colorado, exceeded the amount, as limited by said section six (6) of article eleven (11) of said constitution, to wit, the sum of six dollars ($6.00) on each thousand dollars of the assessed valuation of the taxable property in said county, and that the debt contracted or attempted to be contracted by the issuing or attempted issuing of said bonds and each of them increased the total indebtedness of said county for all purposes, exclusive of debts contracted before the

adoption of the constitution of the State of Colorado, to an amount in excess of six dollars ($6) on each one thousand dollars of the assessed valuation of the taxable property of said county as aforesaid, in violation of said constitutional provision; that no part of said indebtedness contracted or attempted to be contracted by the issuing of said bonds or any of them was incurred by a vote of the electors of said county; that the defendant is informed and believes that the plaintiff had full knowledge when he received said coupons that the bonds to which the same were formerly attached had been issued in violation of said constitutional provision as aforesaid.

For a fifth and further defense to plaintiff's cause of action and to the matters and things alleged and set forth in the complaint the defendant alleges—

That said bonds in the complaint mentioned and each of them were issued or attempted to be issued and delivered by the said board of county commissioners of said Chaffee county in
17 exchange for county warrants, so called, theretofore issued or attempted to be issued by the said board of county commissioners of said Chaffee county; that the so-called county warrants, and each of them, exchanged as aforesaid for the said bonds designated in the complaint by number and series, and to which were formerly attached the said coupons in the complaint mentioned and designated, were issued or attempted to be issued and the debt thereof contracted or attempted to be contracted by the said board of county commissioners in violation of and contrary to the provisions of section six of article eleven of the constitution of the State of Colorado; that at the several times and dates on which said warrants were issued, and each of them, the assessed valuation of the taxable property of said county was not less than one million of dollars, and did not exceed the sum of five million of dollars; that at the several times and dates at which each of said warrants were issued or attempted to be issued and the debt thereof contracted or attempted to be contracted by said board of county commissioners the aggregate amount of indebtedness of said county, exclusive of debts contracted before the adoption of the constitution of the State of Colorado, had reached the limit prescribed by said section six (6) of article eleven (11) of the said constitution, to wit, the sum of six dollars on each one thousand dollars of the assessed valuation of the taxable property of said county.

That no part of the debt in consideration or payment of which said warrants were issued or attempted to be issued was contracted by a vote of the electors of said county; that the issuing of each of said warrants increased the indebtedness of said county in
18 excess of the limits aforesaid, and each of said warrants were issued without authority of law, and were null and void, and were not a valid consideration in law for said bonds exchanged therefor as aforesaid; that for the reasons aforesaid the said bonds are null and void, and the said coupons are not a legal charge or claim against said county. And the defendant further alleges, upon information and belief, that when the plaintiff received said coupons he had knowledge of the fact that the bonds to which the same were

formerly attached had been issued in exchange of said warrants, and that said warrants had been issued in violation of the aforesaid constitutional provision, and that the same were null and void and were not a valid consideration for said bonds.

For a sixth and further defense to plaintiff's cause of action and to the matters and things alleged and set forth in the complaint the defendant alleges—

That the board of county commissioners of said Chaffee county had no power, authority, or jurisdiction to issue the bonds mentioned in the complaint, or any of them; that the amount of the bonds to be issued was never submitted to the electors of said Chaffee county; that the legal floating indebtedness of said Chaffee county, at the time said bonds were issued or at any time prior thereto, did not exceed the sum of ten thousand dollars. All of which facts, as defendant is informed and believes, the plaintiff well knew when he received the coupons mentioned in the complaint.

For a seventh and further defense to plaintiff's cause of action and to the matters and things alleged and set forth in the complaint defendant alleges—

19 That on the 31st day of August, A. D. 1882, the date of the first publication of the notice requesting the holders of the warrants of said county to submit in writing to the board of county commissioners of said county a statement of the amount of warrants of said county which they would exchange at par and accrued interest for the bonds of said county, as required by sec. one of an act entitled "An act to enable the several counties of the State to fund their floating indebtedness," approved February 21st, 1881, the assessed valuation of the taxable property of said county, as shown by the assessment-rolls of said county, was two million six hundred and sixty-seven thousand five hundred and one dollars ($2,667,501.00).

That the amount of indebtedness of said county for all purposes, exclusive of debts contracted prior to the adoption of the constitution of the State of Colorado, could not exceed the sum of sixteen thousand and five dollars ($16,005.00) unless the proposition to incur further indebtedness was first submitted to the electors of said county, and a majority voting therefor voted in favor of incurring the same.

That no part of the debt of said county, as represented by the bonds mentioned in the complaint, was incurred by a vote of the electors of said county, as provided by the constitution of the State of Colorado.

That the bonds issued by the board of county commissioners of said county on the first day of December, A. D. 1882, as alleged in the complaint, aggregate the sum of one hundred and twenty-one thousand three hundred dollars ($121,300.00).

20 And the defendant further alleges that the total amount of the valid floating indebtedness of the said county on the said 31st day of August, A. D. 1882, did not exceed the sum of sixteen thousand and five dollars, which the plaintiff well knew, as defendant is informed and believes, when he received the coupons mentioned in the complaint, and that all of said bonds issued in excess

of the sum of sixteen thousand and five dollars ($16,005.00) are null and void.

(Signed) G. K. HARTENSTEIN AND
R. K. HAGAN,
Attorneys for Defendant.

STATE OF COLORADO, } ss:
County of Arapahoe, }

G. K. Hartenstein, being first duly sworn, on his oath deposes and says that he is one of the attorneys for the defendant in this action; that he knows the contents of the foregoing answer; that the same is true of his own knowledge except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

That affiant makes this verification because the defendant is a corporation and because the facts are within his knowledge.

(Signed) G. K. HARTENSTEIN.

Subscribed and sworn to before me this 1st day of November, A. D. 1887.

(Signed) JOHN HIPP,
[NOTARIAL SEAL.] *Notary Public.*

21 (Endorsed:) No. 2193. United States circuit court. Andrew Potter *vs.* The Board of County Commissioners of Chaffee County. Answer. Filed Nov. 1, 1887. (Signed) William A. Willard, clerk. G. K. Hartenstein & R. K. Hagan, att'ys for defendant.

And afterwards and on, to wit, the 19th day of November, A. D. 1887, came again the said plaintiff, by his attorneys aforesaid, and filed in said court and in said cause his demurrer to the second, third, fourth, fifth, sixth, and seventh defenses of the answer heretofore filed herein.

And the said demurrer is in words and figures as follows, to wit:

Demurrer to Answer.

Circuit Court of the United States, District of Colorado.

ANDREW POTTER, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE, Defendant. } Demurrer.

Now comes the said plaintiff and demurs to the second, third, fourth, fifth, sixth, and seventh defenses by said defendant herein pleaded, and avers that said defense as pleaded makes out no defense to the said cause of action of the said plaintiff.

(Signed) TELLER & ORAHOOD,
Plaintiff's Attorneys.

22 (Endorsed:) 2193. C. C. of the U. S., dist. of Colo. Andrew Potter *vs.* The Board of Co. Comm'rs of Chaffee Co. Demurrer to answer. Filed Nov. 19, 1887. (Signed) William A. Willard, clerk. Teller & Orahood, pl'ff's att'ys.

And afterwards and on, to wit, the 12th day of January, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1887, of said court—present, the Honorable David J. Brewer, circuit judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Demurrer to Answer Sustained. Judgment.

ANDREW POTTER *vs.* THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE.	2193.	Money Demand.

At this day comes the said plaintiff, by Willard Teller, Esq., his attorney, and the said defendant, by G. K. Hartenstein, Esq., its attorney, also comes.

And the demurrer of the said plaintiff to the answer herein having heretofore come on to be heard and having been argued by counsel and by the court taken under advisement, and the court being now sufficiently advised in the premises, it seemeth to the court now here that the said answer is not sufficient in law, and so the said demurrer is sustained.

And the motion of the said plaintiff for judgment upon
23 the pleadings having also been argued by counsel and taken under advisement by the court, and the court being now sufficiently advised in the premises, it is ordered by the court, for good and sufficient reasons to the court appearing, that the said motion be sustained.

And thereupon the court doth assess the said plaintiff's damages, by reason of the matters and things in his said complaint alleged, at the sum of nine thousand nine hundred and eighty dollars and thirty-one cents ($9,980.31).

Wherefore it is ordered by the court that judgment be entered herein in favor of the said plaintiff and against the said defendant for the said sum of nine thousand nine hundred and eighty dollars thirty-one cents ($9,980.31) and the said plaintiff's costs, to be taxed.

And thereupon and on the same day, to wit, the 12th day of January, A. D. 1888, judgment was duly entered against the said defendant in the judgment book of said court in pursuance of the statutes and rules of court.

And the said judgment is in words and figures as follows, to wit:

Judgment.

ANDREW POTTER
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE. } 2193. Money Demand.

24 On this 12th day of January, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1887, of said court, there being present the Honorable David J. Brewer, circuit judge—

It is considered by the court that the said plaintiff do have and recover of and from the said defendant nine thousand nine hundred and eighty dollars ($9,980.31) and thirty-one cents, his damages by occasion of the premises in his complaint mentioned in form aforesaid assessed, and his costs by him in this behalf laid out and expended.

And afterwards and on, to wit, the 17th day of January, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Supersedeas Bond.

ANDREW POTTER
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE. } 2193. Money Demand.

At this day comes the said plaintiff, by Willard Teller, Esq., his attorney, and the said defendant, by R. K. Hagan, Esq., its attorney, also comes.

25 And thereupon, on motion of the said defendant, it is ordered by the court that supersedeas bond on writ of error herein be in the sum of twelve thousand dollars ($12,000.00).

And afterwards and on, to wit, the 23rd day of January, A. D. 1888, came again the said defendant, by its attorneys aforesaid, and filed in said court and in said cause its bill of the exceptions reserved by it upon the trial of the issues herein joined.

And the said bill of exceptions is in words and figures as follows, to wit:

Bill of Exceptions.

In the Circuit Court of the United States, District of Colorado.

ANDREW POTTER, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE, Defendant.

Be it remembered that heretofore, on the 12th day of January, A. D. 1888, this cause coming on to be heard on the following motion—that is to say:

"Now comes the plaintiff in the above-entitled action and moves the court to enter judgment herein in favor of plaintiff and against said defendant in accordance with the prayer of the complaint
26 on the pleadings herein, because defendant's answer, heretofore filed herein, is insufficient in law and each defense thereof is insufficient to constitute an answer or defense to the couse of action set up in plaintiff's complaint.

TELLER & ORAHOOD,
Plaintiff's Attorneys.

Which motion was by the court sustained and judgment rendered in favor of the plaintiff for the sum of nine thousand nine hundred and eighty dollars and thirty-one cents; to which rulings and judgment defendant then and there excepted to.

And inasmuch as the matters herein set forth do not appear of record in this action, defendant presents this their bill of exceptions and ask that the same be signed and sealed, which is accordingly done, this 17th day of January, A. D. 1888.

(Signed) DAVID J. BREWER,
Circuit Judge.

(Endorsed:) 2193. U. S. C. C., dist. of Colo. Andrew Potter *vs.* Commissioners of Chaffee County. Bill of exceptions. Filed Jan. 23, 1888. (Signed) William A. Willard, clerk. G. K. Hartenstein, R. K. Hagan, att'ys.

And afterwards and on, to wit, the 14th day of February, A. D. 1888, came again the said defendant, by its attorney aforesaid, and filed in said court and in said cause its bond, and sued out of said court a writ of error and citation to the Supreme Court
27 of the United States.

And the said bond is in words and figures as follows, to wit:

Bond.

THE UNITED STATES OF AMERICA,
District of Colorado.

Know all men by these presents that we, the Board of County Commissioners of the County of Chaffee, as principal, and Alex.

Hogue, Otis White, J. A. Monahan, L. W. Craig, and J. B. Browne, as sureties, are held and firmly bound unto Andrew Potter in the full and just sum of twelve thousand ($12,000) dollars, to be paid to the said Andrew Potter, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 23rd day of January, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at the November term, A. D. 1887, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between Andrew Potter, plaintiff, and The Board of County Commissioners of the County of Chaffee, defendant, judgment was rendered against the said The Board of County Commissioners of the County of Chaffee, and a writ of error having been obtained to reverse the judgment of said court, and a citation directed to the said Andrew Potter, citing and admonishing him to be and appear at a term of the Supreme Court of the United States to be held
28 at Washington on the 8th day of October next:

Now, the condition of the above obligation is such that if the said The Board of County Commissioners of the County of Chaffee shall prosecute said writ of error to effect and answer all damages and costs if it fails to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

(Signed) THOS. J. EHRHART, [SEAL.]
Chairman Board Chaffee Co. Com'rs.
" ALEX. HOGUE. [SEAL.]
" OTIS WHITE. [SEAL.]
" J. A. MONAHAN. [SEAL.]
" L. W. CRAIG. [SEAL.]
" J. B. BOWNE. [SEAL.]

[Seal Chaffee Co.]

Attest:
(S'g'd) E. G. BETTIS,
County Clerk & Recorder.

Approved Feb. 14, 1888.
(Signed) MOSES HALLETT, *Judge.*

Justification.

THE UNITED STATES OF AMERICA, }
District of Colorado, } ss:

Alex. Hogue, Otis White, J. A. Monahan, L. W. Craig, J. B. Bowne, sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in real estate, stock, & personal property the sum below set opposite his name—that is to say:
29 As to Alex. Hogue, two thousand dollars.
As to Otis White, ten thousand dollars.

As to J. A. Monahan, five thousand dollars.
L. W. Craig, twenty thousand dollars.
J. B. Bowne, ten thousand dollars.
Over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

(Signed) OTIS WHITE.
" J. B. BOWNE.
" J. A. MONAHAN.
" L. W. CRAIG.

Subscribed and sworn to before me, at Salida, this eighth day of February, A. D. 1888.

[NOTARIAL SEAL.] (Signed) L. P. RUDOLPH,
Notary Public.

My commission expires June 22, 1891.

(Endorsed:) Gen. No. 2193. Circuit court of the United States, district of Colorado. Andrew Potter *vs.* Board of Commissioners of the County of Chaffee. Bond, $12,000. Filed this 14 day of Feb., A. D. 1888. (Signed) William A. Willard, clerk, by F. W. Tupper, deputy clerk.

And the said writ of error, with the return of the clerk thereon, is next hereto attached, to wit:

30 *Writ of Error to Circuit Court U. S., District of Colorado.*

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

The President of the United States to the judge of the circuit court of the United States for the district of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, between Andrew Potter and The Board of County Commissioners of the County of Chaffee, a manifest error hath happened, to the great damage of the said The Board of County Commissioners of the County of Chaffee, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at Washington, D. C., together with this writ, so that you have the same at Washington on the eighth day of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 14th day of February, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the 112th year.

Seal United States Circuit Court, District of Colorado.

WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

Allowed by—
MOSES HALLETT, *Judge*.

[Endorsed:] Gen. No. 2193. Circuit court of the United States, district of Colorado. The Board of County Commissioners of the County of Chaffee, plaintiff in error, *vs.* Andrew Potter. Writ of error to circuit court U. S., district of Colorado. Filed in circuit court of the U. S. this 14th day of Feb., A. D. 1888. William A. Willard, clerk, by F. W. Tupper, deputy clerk. G. K. Hartenstein & R. K. Hagan, attorney- for plaintiff in error.

The defendant having served this writ of error by lodging a copy thereof for the adverse party in the clerk's office within sixty (60) days, Sundays exclusive, after the rendition of the judgment herein, and having given the security required by law on the issuing of the citation, this writ is therefore a supersedeas.
February 14th, 1888.

[Seal United States Circuit Court, District of Colorado.]

Teste:

WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

Return.

THE UNITED STATES OF AMERICA, *District of Colorado*, } *ss*:

In obedience to the command of the within writ, I herewith transmit to the honorable Supreme Court of the United States at Washington, D. C., a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Witness my hand and the seal of said circuit court, at Denver, in said district, this 25th day of February, A. D. 1888.

Seal United States Circuit Court, District of Colorado.

WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

31 And the said citation is next hereto attached, to wit:

Citation.

32 Citation, U. S. circuit court.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

The United States of America to Andrew Potter, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at the city of Washington on the 8th day of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Colorado, wherein The Board of County Commissioners of the County of Chaffee is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the district court of the United States for the district of Colorado, this 14th day of February, in the year of our Lord one thousand eight hundred and eighty-eight.

MOSES HALLETT, *Judge.*

32½ [Endorsed:] Gen. No. 2193. Circuit court of the United States, district of Colorado. The Board of County Commissioners of the County of Chaffee, plaintiff in error, *vs.* Andrew Potter, defendant in error. Citation. Filed in circuit court of the U. S. this 18th day of Feb., A. D. 1888. William A. Willard, clerk, by F. W. Tupper, deputy clerk. G. K. Hartenstein & R. K. Hagan, attorney- for plaintiff in error.

Proof of Service.

THE UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

Due service of copy of the within citation is hereby admitted as had on this 17th day of February, 1888.

TELLER & ORAHOOD,
Att'ys for Def't in Error, Denver, Colo.

Sworn to and subscribed before me this — day of ——, A. D. 18—.

—— ——, *Clerk,*
By —— ——, *Deputy Clerk.*

33 UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete tran-

script and copy of the record and proceedings, together with all things concerning the same, heretofore had and entered of record and filed in said court and in a certain cause lately in said court pending, wherein Andrew Potter was plaintiff and The Board of County Commissioners of the County of Chaffee was defendant, as fully and completely as the same still remain on file and of record in my office.

Seal United States Circuit Court, District of Colorado.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 25th day of February, A. D. 1888.

WILLIAM A. WILLARD, *Clerk*,
B- F. W. TUPPER, *Deputy Clerk*.

Transcript, $10.25.

34 THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE, Plaintiff in Error,
vs.
ANDREW POTTER, Defendant in Error.

Now comes the plaintiff in error and says that in the judgment, record, and proceedings in the above-entitled cause there is manifest and material error, in this, to wit:

1. The said circuit court of the United States erred in sustaining the demurrer of the said defendant in error to the answer of the said plaintiff in error.

2. That the said circuit court of the United States erred in granting the motion of the defendant in error for judgment on the pleadings against said plaintiff in error.

3. The said court should have entered judgment for the plaintiff in error and against the defendant in error.

G. K. HARTENSTEIN,
R. K. HAGAN, AND
MACON, HOBSON & MACON,
Attorneys for Plaintiff in Error.

Endorsed on cover: Colorado C. C. U. S. No. 103. The Board of County Commissioners of the County of Chaffee, plaintiff in error, *vs.* Andrew Potter. Filed September 18, 1888.

Office Supreme Court U. S.
FILED,
SEP. 25 1901
JAMES H. McKENNEY,
CLERK.

—IN THE—

SUPREME COURT

—OF THE—

UNITED STATES.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE,
Plaintiff in Error.
vs.
ANDREW POTTER,
Defendant in Error.

In Error to Circuit Court of the United States for the District of Colorado.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

THOMAS MACON,
Atty. for plaintiff in Error.

COLLINS PRINT, 1418 & 1420 LARIMER.

—IN THE—

SUPREME COURT

—OF THE—

UNITED STATES.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE,
Plaintiff in Error.
vs.
ANDREW POTTER,
Defendant in Error.

In Error to Circuit Court of the United States for the District of Colorado.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

Andrew Potter brought suit against the Board of County Commissioners of Chaffee county, Colorado, to recover on certain interest coupons attached to and a part of certain bonds issued by said county in 1882, for the purpose of funding its floating indebtedness.

These bonds were assumed to be issued by authority of an act of the legislature of Colorado,

approved February 21, 1881. They were made up of three series, lettered respectively "A," "B" and "C," the first series of the denomination $1,000, the second of $500, and the third of $100. The amount of the bonds was in aggreate $187,100. The assessed valuation of the taxable property was $2,667,501 when the notice prescribed by the statute was published.

The constitutional limitation of indebtedness to be incurred by counties at the time these bonds were issued was $3 on the $1,000, for Chaffee county.

The constitutional provision referred to is § 6, Art. 11.

The act of February 21, 1881, provides among other things, in § 1, that the Board of Commissioners shall publish notice for thirty days of an election to be held to vote upon the proposition to issue bonds, and if such issue shall be voted the Board is to execute them and pay them out to such persons as hold the warrants of the county older in date than the publication of the first statutory notice, but not greater in amount than the indebtedness of the county at the date of such first notice; and if any bonds shall be issued in excess of such amount, they are to be *void*. The commissioners are to determine the amount of such bonds to be issued, and then make a certificate of such amount and spread it upon the county records. These bonds are also to be registered in the office of the auditor of the state. Each bond issued shall

be numbered, and registered in a book kept for that purpose by the county treasurer, in the order in which they are issued. The assessed valuation of the several counties of the state of Colorado for any year is a public record to which all persons have access.

The defendant in error held interest coupons attached to and a part of bonds in each of the three series. In series "A" he held, among others, coupons belonging to No. 99, in "B" coupons attached to No. 131, and of series "C," coupons attached to No. 226.

The defense set up is, that bonds were illegally issued, and created no binding obligation on the county in this, that they were not within the constitutional limitation prescribed by § 6 of Art. 11 of the Constitution of Colorado, but in excess thereof; that no election was held to vote upon the issue thereof, as prescribed by the act of the legislature of Colorado, approved February 21, 1881; and that defendant in error had notice of both of these facts when he bought the coupons upon which this suit was brought.

To these defenses a demurrer was interposed, and sustained by the court, and motion was then made for judgment on the pleadings by plaintiff below, which motion was sustained and judgment rendered against defendant below for the amount of the coupons described in the complaint.

That judgment is brought here for review.

The answer of defendant below, among other things, set out the amount of the assessed valuation of the county at the date of the first notice published by the Board of County Commissioners to the holders of county warrants, as required by the statute, under which the bonds were assumed to be issued, to be $2,668,000; and the amount of the said bonds to be $121,300. This last amount is erroneous, being too small by at least $69,800, as is clearly shown by the numbers of the bonds to which the coupons sued on had been attached, as those numbers show that the amount covered by them was at all events at least $187,100; but even the sum of $121,300 is sufficient for our purpose here.

The answer further alleged the legal limit of Chaffee county's indebtedness, both with and without a vote authorizing its increase, as provided in §6, Art. 11 of the Constitution, and averred that no election for such purpose had ever been held.

The opinion, the grounds thereof, and the judgment of the Circuit court are found in 33 Fed. Rep. 614-5-6, and are rested solely upon the recitals in the bonds, to-wit: "It is further certified that the total amount of this issue does not exceed the limit prescribed by the constitution of the state of Colorado, and that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of the said county of Chaffee voting on the question at a general election duly held in said county on the seventh day of November, A. D. 1882."

The Circuit court held that these recitals created an estoppel upon the county to urge the constitutional inhibition upon county indebtedness, and distinguished the case from

McClure vs. Township of Oxford, 94 U. S. 429.

Town of Coloma vs. Eaves, 92 Id. 484.

Buchanan vs. Litchfield, 102 Id. 278.

Northern Bank vs. Porter Township, 110 Id. 614-5.

The County of Dixon vs. Field, 111 Id. 83.

The principle declared and applied is the same in each of these cases so far as the declarations, statements or recitals made by the persons, officials or tribunal authorized to execute and issue such bonds have the effect to bind the municipality. And it seems to be plainly expressed in these cases that to effect an estoppel these declarations must be of *facts*, and of facts also the existence of which these persons or officers are charged with ascertaining, and by their certificate establishing, for the information and guidance of others; and, further, these facts must be such that the public generally have not the means of ascertaining.

In the *Town of Coloma vs. Eaves, supra*, this court say: "When legislative authority has been given to a municipality or to its officers to subscribe to the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent

condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with power to decide whether the condition precedent has been complied with, their recital that it has been, made in the bonds issued by them, and held by a *bona fide* purchaser, is conclusive of the fact, and binding upon the municipality, for the recital is itself a decision of the fact by the appointed tribunal."

It certainly was not made the duty of the Board of Commissioners by the act referred to, to determine the amount of the valuation of the taxable property of the county. That fact was determined by an immutable law of numbers, and that determination was expressed in a record to which all had access and all knew, and the defendant in error is legally held to have known at the very moment he became the owner of these coupons. In fact, if we look to the act of the 21st of February, 1881, we find that they are charged with no duty as to this assessment in terms; they are to ascertain the indebtedness of the county, and issue the bonds in amount equal to such indebtedness, and no more. They are not required to certify anything as to such valuation. Would a certificate of this Board of Commissioners spread upon the record, to the effect that the assessed valuation of the taxable property of the county was $20,000,000, or such a recital in the brnds, have had the effect to bind the county to that statement, and release the purchaser from the

rule of law holding him to know the record, so far as it entered into and affected the obligation he was buying?

Had no such recital appeared in the bonds, and a purchaser had made enquiry of the Board of Commissioners as to the amount of the valuation, and been misinformed, would the county have been estopped to show the truth?

The recital on which the court below founded its judgment is but one of law, the opinion of those executing the bonds upon a construction of the constitution, and, as it appears, a most erroneous one.

"All parties are equally bound to know the law; and a certificate reciting the actual facts, and that thereby the bonds were conformable to the law, when judicially speaking they are not, will not make them so, nor can it work an estoppel upon the county to claim the protection of the law." * * * "So if the fact necessary to the existence of the authority was by law to be ascertained, not officially by the officers charged with the execution of the power, but by reference to some express and definite record of a public character, then the true meaning of the law would be that the authority to act at all depended upon the actual objective existence of the requisite fact, as shown by the record and not upon its ascertainment and determination by any one; and the consequence would necessarily follow that all persons claiming under the exercise of such a power might be put to proof of the fact

made a condition of its lawfulness, notwithstanding any recitals in the instrument."

Dixon Co. vs. Field, *supra*.

It is true the Board of Commissioners should have, and doubtless did examine the assessed valuation of the county, as it appeared of record, for their own information and guidance, but only for themselves, and their reading of that record was binding on no one else. Nor was any one justified in accepting their arithmetical calculation by which they determined the amount of indebtedness they might lawfully contract.

But it seems to be supposed that because the bonds did not show upon their face the amount for which they were issued, that the purchaser had no data or facts from which he could ascertain the ratio between the amount of the issue and the assessed value of the property of the county, and this case is distinguished from Dixon Co. vs. Field, because in the latter case the bonds did show by recital the amount of their issue; and

It is said that "no man could by an examination of the bond get any information as to the amount of issue, or by comparing any information given by the bond with the record notice of the assessed valuation know that the county had exceeded its power in the issue of the bonds."

To this view there are several answers: First, this court by referring to the fact that the Dixon Co. bonds showed the amount of their issue, and thus

informed the intending purchaser of that fact, do not hold, by implication or otherwise, that there is no other source or means of information equally as binding upon the purchaser, certainly any other document or record, giving the same knowledge, would be as potent as the bond itself.

Second: In this case the bonds did show on their faces that they were issued greatly in excess of their constitutional limit; for, as has been pointed out above, the defendant in error held coupons from bond No. 99, of series "A," which informed him that at least $99,000 of that series was issued; and of series "B," No. 131, equivalent to $65,500; and of "C," No. 226, equivalent to $22,600; in the aggregate, $187,100. Had the bonds recited this to be the amount of the issue he would have had no more definite and certain knowledge of the fact.

Third: By the act under which the issue was made, the Board of Commissioners was required to certify the amount for which bonds would be issued, and spread this certificate upon the county records; and it is made by the same act a public record. And of this act and this record the purchaser was bound to take notice; besides all these sources of knowledge, the office of the auditor of state contained a registry of all bonds issued.

Fourth: By the act, section 2, the county treasurer of the county issuing such bonds is required to keep a list of all the bonds issued as soon

as they are paid out; and this list shows, and did show the purchaser of bond No. 99, series "A," that at least 99 of this series had been issued, from which he could not but know that the county was purporting to bind itself in the sum of $99,000. The possession of bond 99 "A," 131 "B" and 226 of "C," showed that the county of Chaffee was assuming to bind itself in the sum of at least $187,100.

Hence, it is unnecessary that the bonds should show in any way the amount of their issue.

Legally speaking, we may say that when plaintiff below bought these bonds, he new that the assessed value of the county was but $2,668,000 at the date of the first publication of the statutory notice preliminary to their issuance; that he knew the amount of the issue was $187,100; and also knew for what amount bonds could be issued by Chaffee county under the constitution at the date of these instruments. With all these record facts before him, this recital now relied on is useless, as it would be, had the bonds set forth the assessed valuation and the amount for which the issue was made. Yea more so, for the record is higher evidence and more binding on the purchaser than any mere recital of such recorded fact.

But is this recital one of fact? Is it not a mere legal opinion, decision or conclusion of the officers executing the instrument? They were not invested with authority to decide any such question, for the act contemplates that this question of excessive

issue may come up for judicial determination, and declares that all bonds in excess of the county indebtedness *shall be void*.

Under the ruling in this case, how could that question ever arise for determination if this recital cuts off enquiry into that fact? The result would be, both the act of the legislature and the constitution would become mere toys in the hands of a board of county commissioners, who could allow them force, or nullify them by mere flourish of the pen, as ther interest or caprice impelled them.

Both the legislature and those who voted for the issue of these bonds intended to provide for funding legal or valid indebtedness. Or if it was the intent of the act to fund all indebtedness, illegal as well as legal, it was void for constitutional reasons, and the legislature could not grant such power. By what legal alchemy is a mere recital made,—as this one was—to have greater effect than the constitution or the act of the legislature. Would a provision that this representation should protect all holders of the bonds against the constitutional limitation inserted in the act, be tolerated? If not, how can it have this magical effect when made on the mere motion of the officers who derive all their authority in the premises from the legislation of the state?

The question here is one of *power* to act, not of the method of action the power being granted. The constitution denies the power exercised in this instance, and no other legislation assumed to grant it. The only authority under the act of February

21st, A. D. 1881, granted the Board of Commissioners was to issue bonds for *legal indebtedness*, and any and every attempt to exceed that authority, or to do something not permitted, was usurpation and a nullity. Still it is supposed that by virtue of the declaration of authority made by the commissioners, and the rights of *bona fide* holders, the constitution and the act of legislation are repealed.

We have heard of a "higher law," but did not know before that it was the product of these two facts.

But as we conceive that the case of Lake County vs. Graham, decided by this court, and reported in 9 Supreme Court Reporter, at p. 654, covers every question at issue in this case, further discussion is useless.

Respectfully submitted.

THOMAS MACON,

Atty. for plaintiff in Error.

COLLINS PRINT, 1418 & 1420 LARIMER.

NOV 25 1895
JAMES H. McKINNEY
CLERK

IN

The Supreme Court

OF

The United States.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE,
Plaintiffs in Error.

vs.

ANDREW POTTER,
Defendant in Error.

Brief and Argument for Defendant in Error.

WILLARD TELLER,
Attorney for Defendant in Error.

O. J. Kelly, Law Printer, Denver, Colo.

IN

The Supreme Court

OF

The United States.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CHAFFEE,
Plaintiffs in Error.

vs.

ANDREW POTTER,
Defendant in Error.

Brief and Argument for Defendant in Error.

STATEMENT OF FACTS.

The action was brought by defendant in error on certain coupons attached to certain funding bonds, issued by Chaffee County, to fund a floating debt of said county, existing August 31, 1882, which bonds recite an issue under an act of the Legislative Assembly of the State of Colorado, approved February, 1881, which act was and is as follows:

"SECTION 1. It shall be the duty of the County Commissioners of any county having a floating in-

debtedness exceeding ten thousand dollars, upon the petition of fifty of the electors of said counties [county], who shall have paid taxes upon property assessed to them in said county in the preceding year, to publish, for the period of thirty days, in a newspaper published within said county, a notice requesting the holders of the warrants of such county to submit, in writing, to the Board of County Commissioners, within thirty days from date of the first publication of such notice, a statement of the amount of the warrants of such county, which they will exchange at par, and accrued interest for the bonds of such county, to be issued under the provisions of this act, taking such bonds at par. It shall be the duty of such Board of County Commissioners, at the next general election occurring after the expiration of thirty days from the date of the first publication of the notice aforementioned, upon the petition of fifty of the electors of such county who shall have paid taxes upon property assessed to them in said county in the preceding year, to submit to the vote of the qualified electors of such county who shall have paid taxes on property assessed to them in said county in the preceding year, the question whether the Board of County Commissioners shall issue bonds of such county, under the provisions of this act, in exchange, at par, for the warrants of such county issued prior to the date of the first publication of the aforesaid notice; or they may submit such question at a special election, which they are hereby empowered to call for that purpose, at any time after the expiration of thirty days from the date of the first publication of the notice aforementioned, on the petition of fifty qualified electors as aforesaid; and they shall publish, for the period of at least thirty days immediately preceding such general or special election, in some newspaper published within such county, a notice that such question will be submitted to the duly qualified electors as aforesaid, at such election. The County Treasurer of such county shall make out and cause to be delivered to the judges of election, in each election

precinct in the county, prior to the said election, a certified list of the taxpayers in such county who shall have paid taxes upon property assessed to them in such county in the preceding year; and no person shall vote upon the question of the funding of the county indebtedness unless his name shall appear upon such list, nor unless he shall have paid all county taxes assessed against him in such county in the preceding year. If a majority of the votes lawfully cast upon the question of such funding of the floating county indebtedness shall be for the funding of such indebtedness, the Board of County Commissioners may issue to any person or corporation holding any county warrant or warrants issued prior to the date of the first publication of the aforementioned notice coupon bonds of such county in exchange therefor, at par. No bonds shall be issued of less denomination than one hundred dollars, and if issued for a greater amount, then for some multiple of that sum, and the rate of interest shall not exceed eight per cent per annum. The interest to be paid semi-annually, at the office of the County Treasurer, or in the city of New York, at the option of the holders thereof. Such bonds to be payable at the pleasure of the county, after ten years from the date of their issuance, but absolutely due and payable twenty years after date of issue. The whole amount of bonds issued under this act shall not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, and the amount shall be determined by the County Commissioners, and a certificate made of the same, and made a part of the records of the county; and any bond issued in excess of said sum shall be null and void; and all bonds issued under the provisions of this act shall be registered in the office of the State Auditor, to whom a fee of ten cents shall be paid for recording each bond.

"SEC. 2. All bonds which may be issued under the provisions of this act shall be signed by the Chairman of the Board of County Commissioners, countersigned by the County Treasurer of

the county, and attested by the Clerk of said county, and bear the seal of the county upon each bond, and shall be numbered and registered in a book kept for that purpose by the County Treasurer, in the order in which they are issued; each bond shall state upon its face the amount for which the same is issued, to whom issued and the date of its issuance.

"SEC. 3. The County Commissioners shall be authorized to prescribe the form of such bonds, and the coupons thereto, and to provide for the half-yearly interest accruing on such bonds actually issued and delivered; they shall levy annually a sufficient tax to fully discharge such interest, and for the ultimate redemption of such bonds they shall levy annually, after nine years from the date of such issuance, such tax upon all the taxable property in their county as shall create a yearly fund equal to ten (10) per cent of the whole amount of such bonds issued, which fund shall be called the redemption fund. And all taxes for interest on and for the redemption of such bonds shall be paid in cash only, and shall be kept by the County Treasurer as a special fund, to be used in payment of interest on and for the redemption of such bonds only; and such taxes shall be levied and collected as other taxes.

"SEC. 4. It shall be the duty of the County Treasurer, when there are sufficient funds in his hands to the credit of the redemption fund, to pay in full the principal and interest of any such bonds, immediately to call in and pay as many of such bonds, and accrued interest thereon, as the funds on hand will liquidate, as hereinbefore provided. Such bond or bonds shall be paid in the order of their number; and when any bonds or coupons issued under this act are taken up, it shall be the duty of such Treasurer to certify his action to the Board of County Commissioners, who shall cancel the same, so that they can be plainly identified, and cause a record to be made of the same; and when it is desired to redeem any of such bonds, the County Treasurer shall cause to be published for thirty

days, in some newspaper at or nearest the county seat of the county, and in a newspaper published in the city of Denver, a notice that certain county bonds by numbers and amounts will be paid upon presentation, and at the expiration of thirty days such bonds shall cease to bear interest.

"SEC. 5. All persons voting on the question as hereinbefore provided shall vote by separate ballot, which shall be deposited in a box to be used for that purpose only, and on which ballot shall be printed the words, "For funding county debt," or "Against funding county debt;" and if, upon canvassing to [the] vote (which shall be canvassed in the same manner as the vote for county officers), it shall appear that a majority of all votes cast upon the question so submitted are for funding the county debt, then the County Commissioners shall be authorized to carry out the provisions of this act, and the canvassing board shall certify the vote, and it shall be made part of the county records. The judges of election shall make and certify to the Clerk of the county a separate list of the names of the electors voting upon the question of the funding of the county indebtedness, in the order in which the ballot of the elector so voting is received, and each ballot shall be numbered in the order in which it is received, and the number recorded and [on] the said list of voters opposite the name of the voter who presents the ballot."

Laws 1881, p. 85, Secs. 1, 2, 3, 4 and 5.

The powers and duties of a County Board of Commissioners were and from the date of adoption of the Constitution were, in substance as follows:

1. To make such orders concerning the property of the county as is deemed expedient,

2. To examine and settle all accounts of the receipts and expenses of the county, and to examine, settle and allow all accounts chargeable against

the county, and, when so settled, issue orders therefor as provided by law.

3. To build and keep in repair county buildings.

4. Apportion taxes and contract loans for the county for the purpose of buildings and roads when authorized by vote, etc.

5. To represent the county and have the management of the business concerns of the county in all cases where no other provision was made.

6. To exercise such other and further powers as may be especially conferred by law (General Laws Colorado 1877, Sections 428 and 446).

The constitutional provision affecting the action of such Board (Article XI. and Section 6) is as follows:

"No County shall contract any debt by loan in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges; and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county, following, to wit: Counties in which the assessed valuation of taxable property, shall exceed five millions of dollars, one dollar and fifty cents on each thousand dollars thereof. Counties in which such valuation shall be less than five millions of dollars, three dollars on each thousand dollars thereof. And the aggregate amount of indebtedness of any county for all purposes, exclusive of debts contracted before the adoption of this constitution, shall not at any time exceed twice the amount above herein limited, unless when, in manner provided by law, the question of incurring such debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed

to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt; but the bonds, if any be issued therefor, shall not run less than ten years, and the aggregate amount of debt so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned; provided, that this section shall not apply to counties having a valuation of less than one million of dollars."

The bond from which coupons were cut, endorsed County of Chaffee, State of Colorado, Funding Bond, was in the usual form, and contained recital as follows: This bond is issued by the Board of County Commissioners of said Chaffee County in exchange at par for valid floating indebtedness of the said county outstanding prior to August 31, 1882, under and by virtue of, and in full conformity with the provisions of an act of the General Assembly of the State of Colorado, entitled, "An Act to enable the several counties of the State to fund their floating indebtedness," approved February 21, 1881, and it is hereby certified that all the requirements of law have been fully complied with by the proper officers in the issuing of this bond. It is further certified that the total amount of this issue does not exceed the limit prescribed by the Constitution of the State of Colorado, and that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of the said County of Chaffee voting on the question at a general election duly held in said County on the 7th day of November, 1882. The bonds of this issue are comprised in three series, designated "A," "B" and "C," respectively, the bonds of series "A" being for the sum of $1,000

each, those of series "B" being for the sum of $500 each, and those of series "C" being for the sum of $100 each. "This bond is one of series . The faith and credit of the County of Chaffee are hereby pledged for the punctual payment of the principal and interest of this bond." See Record in this Court, pages 1 and 2.

A copy of the bond and coupon was set forth in the complaint, and coupon to the amount of $9,132 was declared on. To this plaintiff in error filed seven defenses, or answers, to which defendant in error demurred that they made no defense. The demurrer was sustained, and the plaintiff in error not asking leave to amend, on motion the Court assessed damages on production of the coupons, and judgment was entered therein. Record, pages 7 to 15. Writ of error was sued out, and the only error assigned is that of sustaining demurrer to answer and entering judgment for the amount of coupons and accrued interest.

As to the alleged error, and especially, as to the position of counsel for plaintiff in error, we desire to say that as the bonds did not show anything in respect to the amount of indebtedness of the county, either exclusive of or inclusive of the bonds, and as the bonds themselves recited that they were funding bonds, to take the place of a valid floating debt, this Court will not go with counsel for plaintiff in error into inferences that he seeks to draw from the fact that one coupon of series A was No. 99, for purpose of finding, that to be evidence afforded by the bond that $99,000 of that series had been issued. No such inference could be drawn in any event, and this Court will pre-

sume nothing against the judgment; on the contrary, it will presume, and is bound to presume, in the absence of evidence to the contrary, that the action of the Court below was correct.

Lutz vs. Linthicum, 8 Pet., 165.
Baltimore, etc. vs. Trustees, 91 U. S., 127.
Kearney vs. Deems, 15 Wall., 51.

We submit, if the Court will not presume error, much less will it presume a state of facts that the Record shows nothing about, and with this we come to the only question herein involved, namely, Are the recitals in the bond such as estopped plaintiff in error from setting up defense sought to be interposed? And in discussing that question, we beg leave to state briefly what we think, up to this time, is the settled doctrine of this Court on this question. Beginning with the case of Knox vs. Aspinwall, 21 How., 339; and proceeding with—

Bissell vs. Jeffersonville, 24 How., 287,
Mercer Co. vs. Hackett, 1 Wall., 83,
Gelpecke vs. Dubuque, 1 Wall., 175,
Meyer vs. Muscatine, 1 Wall., 384,
Van Hastrop vs. Madison City, 1 Wall., 291,
Supervisors vs. Schenk, 5 Wall., 772,
Grand Chute vs. Winegar, 15 Wall., 355, and
St. Joseph Township, vs. Rogers, 16 Wall., 644,

we think it clear that this Court holds that when negotiable bonds on their face import an issue under a statute, and compliance with the statute, a purchaser is bound to look no further than the bonds themselves, and when the issue of bonds is predicated on acts to be done by others, and a tribunal is named whose duty is to determine

whether the act has been done, the recitation on the bond that it had been done is conclusive on the county or corporation, and estops it from denying the fact, even though the recitation was false; and further, that *when a corporation has power, under any circumstances, to issue negotiable securities, the bona fide holder has a right to presume they were issued under the circumstances which gave the requisite authority*, and that such bonds are no more liable to be impeached for any infirmity in the hands of such holder than any other commercial paper. That a party is bound to look to the legal authority under which public agents acted, and, finding it sufficiently comprehensive, should have the right to presume that those empowered to act, and, acting under it, had complied with its requirements; and further, that a defense founded on a want of compliance with formalities precedent to their issue, or upon a denial of the correctness of a decision upon any facts which the board or corporation was empowered to decide, was not good as against a *bona fide* holding for value.

In Town of Coloma vs. Eaves, 92 U. S., 484, and

Town of Venice vs. Murdock, 92 U. S., 494,

it is declared to be the settled doctrine of this Court that when persons appointed to decide whether the requisites to the issue of bonds had been complied with, and the bonds recited that they had, the recital was a decision, and the purchaser was not bound to look beyond the recital, and such recital is conclusive of the facts, and binds the corporation.

In County vs. Rockingham, Id., 92 U. S., 631, the doctrine was applied to a case where a bond

recited a subscription in 1869, and the defense was that it was not made until 1879, and was, therefore, prohibited by the Constitution of 1870, and it was recited in the bonds that they were issued under the act of 1869, and in accordance with the vote of three-fifths of the voters, etc., and it was held a decision and recital, not only that the requisite vote was given, but that the voters were qualified, and that the purchaser need not look beyond the statute and the recital of the bond. In the same volume, in Marcy vs. Township of Oswego, 92 U. S., 637, the doctrine is applied to a case where amount of bonds was to be limited to such a sum as would not require more than a 1 cent levy to pay annual interest, and it was held that as against a recital of issuance under the act in pursuance of a vote, it could not be shown that the bonds were in excess of the limitation, and the rule is summed up in Cameron vs. Bolles, 94 U. S., 104 and 109, where bonds recited issuance under and by virtue of a certain act, and in accordance with a vote, at an election specially called; that behind such a recital a *bona fide holder for value* is bound to look *for nothing except legislative authority*, given for the issue of such bonds. See also—

Lincoln vs. Davenport, Id., 801.

County of Henry vs. Nicolay, 95 U. S., 619.

Township, etc., vs. Story, 96 U. S., 271.

San Antonio vs. Mehaffy, 96 U. S., 312.

Cromwell vs. County of Sac, 96 U. S., 57.

The Court says of this class of bonds:

"Whatever fraud the officers authorized to issue them may have committed in disposing of

them, or however entire may have been the failure of the consideration promised by the parties receiving them, these circumstances will not affect the title of subsequent *bona fide* purchasers for value before maturity, or the liability of the municipalities."

In Wilson vs. Salamanca, 99 U. S., 499, the decision in Marcy vs. Oswego, *Supra*, is applied, and we submit those two cases are identical in the facts to the case at bar, so far as defendant's claim is set forth. In—

County of Mäcon vs. Shores, 97 U. S., 272,
County of Daviess vs. Huidekoper, 98 U. S., 98,
Hackett vs. Ottawa, 99 U. S., 86,

the doctrine is applied to cases where *fraud* was alleged in the use and purposes to which the money was put, yet the defense was not allowed to prevail against the recitals. In the latter case the Court says:

" It would be the grossest injustice, and in conflict with all the past utterances of this Court, to permit the city, *having power under some circumstances to issue negotiable securities* to escape the legal liability upon the ground of the falsity of its own representations, made through official agents under its corporate seal as to the purposes for which the bonds were issued," and then asserts that whether such representations were inadvertently or intentionally made, to await inquiry as to the real object in issuing the bonds. In either case it is cut off from any such defense, and closes by a quotation from Bissell vs. City of Jeffersonville, 24 How., 287, as to a municipal corporation, to wit:

"A corporation, quite as much as an individual, is held to a careful adherence to truth in their dealings with mankind, and cannot, by their representations or silence, involve others in onerous engagments, and then defeat the calculations and claims their own conduct had superinduced."

It will be observed that in that case the objection went to the *entire want of authority* to issue bonds for any but municipal purposes, and, as want of authority may be for any reason, the question in that case and the case at bar is the same, since it matters not out of what such authority comes, if such want exists.

Then follow Orleans vs. Pratt, 99 U. S., 676; Lyons vs. Munson, 99 U. S., 684; Block vs. Commissioners, etc., 99 U. S., 687; making a question of conditions, not complied with and set forth as a defense, yet the recital prevailed.

In Buchanan vs. Litchfield, 102 U. S., 278, the suit was brought on coupons of bonds, said to be in excess of a constitutional limitation of indebtedness as being over 5 per cent of assessed value of taxable property. The recital was that the bonds were issued under authority of a certain act, and a certain ordinance, naming each, and the recital was held not to estop the city from showing the bonds in excess, etc. The Court held that the purchaser was bound to take notice of the constitutional limitations, and of such facts as the authorized official assessment disclosed concerning the valuation for the year 1873; but, as neither the statute nor the Constitution prescribed any rule or test by which persons contracting with the city could ascertain the existing indebtedness, it would seem that if the

bonds had contained recitals which, upon a fair construction, amounted to a representation upon the part of the constituted authorities of the city that the requirements of the Constitution were met —that is, that the city's indebtedness, measured by the amount of the bonds, was within the constitutional limits, *then* the city, under the provisions of this Court, might have been estopped from denying the trust of such representative as against a *bona fide* hold, and it cites:

Town of Coloma vs. Eaves, 92 U. S., 484.
Orleans vs. Platt, 99 U. S., 676.
County vs. Savings Bank, 92 U. S., 631.

This decision, as we will show further on, is exactly in point, inasmuch as there was in case at bar no way in which the purchaser of bonds could ascertain *what* the *valid* floating debt was at time of issue, except from the official statutes of the County Board.

Walnut vs. Wade, 103 U. S., 683, was a case of defense of excess of issue of $10,000 over amount of notice, yet the recital was held controlling. See also Harter vs. Kernochan, 103 U. S., 562; Pana vs. Bowler, 107 U. S., 529; Kirkbride vs. LaFayette, 108 U. S., 208. In the latter case power was upheld on ground that Board might judge a railroad within *nine* miles of a town was "near" to it within the statute.

In Sherman vs. Simons, 109 U. S., 735, we have a case very similar to the case at bar, to wit: Bonds issued to fund a floating debt by warrants, etc., under authority of a statute, which statute limited the issue, as does the statute in the case at bar, to no more than enough to pay off and redeem

the outstanding debt. The defense was that while the outstanding debt was but $16,000, the issue of bonds was for $45,000. The fact was that only $15,000 of the debt existed, yet the Commissioners estimated that $36,874 of County indebtedness might be funded, and that it would take $43,400 of bonds at 85 cents on the dollar, the least sum named in the act at which they could be negotiated. The bonds then issued recited that they were issued by authority of the act (referring to it), and this Court held that the recital "was a decision by the very officers whose duty it was, under the law, to fix the amount of bonds which could lawfully be issued. A purchaser of bonds was not required to make further inquiry, and if the finding of the Commissioners was untrue, he could not be affected by its falsity."

In Dallas Co. vs. McKenzie, 110 U. S., 639, this Court affirms the doctrine in Mary vs. Oswego, and Wilson vs. Salamane, *Supra*, that if recitals show a valid issue deferred, that issue was in excess of statutory limit cannot be set up. In Dixon vs. Field, 111 U. S., 83, this Court reasserts that a recital of facts which corporate authorities had authority to find or determine is conclusive, but a recital of facts which they had no authority to determine is not, and, further, that recitals could not be extended to cover matters of law, and says:

"The meaning of the law granting power to issue bonds is that they may be issued, not upon the existence of certain facts to be ascertained and determined when disputed, but upon the ascertainment and determination of their existence by the officers or body designated by law to issue the

bonds upon such a contingency," and asserts that the rule thus stated is the essence of the rule laid down in Coloma vs. Eaves, thus:

"Where it may be gathered from the legislative enactment that the officers of the municipality were invested with the power to decide whether the condition precedent had been complied with, that the recital that it has been is conclusive of the facts, and binding upon the municipality. But that if the validity of the bonds depends upon an estoppel by recitals, the question being as to the power to issue them, it is necessary to establish that the officers exercising them had lawful authority to make the recitals and make them conclusive." (111 U. S., 94.) It then finds that in that case there was no power conferred to issue bonds in excess of an amount equal to ten per cent of the assessed value of property, because, in determining the limit of the power under the statute, the two elements, assessed value and amount of bonds, was controlling and open to every one, the one being a matter of record and the other, value of bonds, being stated in the *recital* itself."

The gist and scope of the decision is all summed up in what is said to be the rule laid down in Coloma vs. Eaves, 92 U. S., 491:

"Where it may be gathered from the legislative enactment that the officers of the municipality were invested with the power to decide whether the condition precedent has been complied with," *then*, "their recital that it has been made in the bonds issued by them and held by a *bona fide* purchaser is conclusive of the fact, and binding upon the municipality, for the recital of the fact is itself

a decision of the fact by the appointed tribunal," and the *converse* of that which this Court lays down thus: "The converse is embraced in the proposition and is equally true. If the officers authorized to issue bonds upon a condition are not the appointed tribunal to decide the fact, which constitutes the condition, then recital will not be accepted as a substitute for proof—in other words, when the validity of a bond depends upon an estoppel, claimed to arise upon the recitals of the instrument, the question being as to the existence of power to issue them, it is necessary to establish that the officers executing the bonds had lawful authority to make the recitals, and to make them conclusive. * * * In the first case there was *no* power at all conferred to issue bonds in excess of 10 per cent on the assessable value of the taxable property."

The case is distinguished from Sherman Co. vs. Simons, where the County Commissioners were constituted by the statute the tribunal for the purpose of determining the amount of indebtedness in excess of which the bonds were issued and held to be within the cases of Buchanan vs. Litchfield, 102 U. S., 278, and Nat. Bank vs. Porter Township, 110 U. S., 608, where it is held that purchaser of bonds was bound to take notice of a constitutional limitation upon municipal indebtedness and of such facts as the official assessment of the city shows, and that township officers could not determine what the action of certain county officers had been, because the statute had not committed that determination to them. In New Providence vs. Halsey, 117 U. S.,

336, this Court, following the Supreme Court of New Jersey, held that when commissioners issue bonds under a statute, they thereby averred that the issue was within the statute, and was conclusive as to the amount, and estopped the township from setting up that the issue was in excess of the amount authorized by the statute, and it is noticeable that this Court does not merely follow the decision of the New Jersey Court, but expressly says it *agrees* with that Court in its opinion.

In Oregon vs. Jennings, 119 U. S., 741, this Court held bonds good on recital, though vote was on condition not complied with, and in Comanche Co. vs. Lewis, 133 U. S., 198, recital held conclusive, though it was clear that debt was fraudulently contracted.

These cases, we think, comprise all that bear upon the question under discussion, and it is clear that the cases of —

Wilson vs. Salamanca,
Marcy vs. Town of Oswego,
Sherman Co. vs. Simons,
New Providence vs. Halsey,
Walnut vs. Wade,
Dixon vs. Field, together with
Guelpcke vs. Dubuque,

contain the principle underlying the decision of the Court below in case at bar. When a corporation has power under *any circumstances* to issue negotiable security, the *bona fide* holder has a right to presume they were issued under the circumstances which give the requisite authority," etc.

Guelpcke vs. Dubuque, 1 Wall., 203.

The principle is, having power to issue bonds

or notes, the purchaser is not bound to inquire whether they have issued securities in excess of what they were authorized, unless the instrument on its face, together with records or other knowledge open to him, gives notice of want of authority, and, above all, the recital of facts within the determination of the officers reciting, can never be disputed as against a *bona fide* holder, and it only remains to apply these principles to the case at bar, and on this we say:

1. The authority to issue funding bonds in exchange for valid floating indebtedness is given to all counties having a valid floating indebtedness of $10,000 or more, upon certain conditions (see act of February 21, 1881, herein set forth). These conditions were—

1. A floating debt of $10,000 or more.

2. Petition of fifty or more electors of the county paying taxes the preceding year.

3. Publication for thirty days of notice to holders to submit in writing a statement of amount they are willing to exchange.

4. Statement to be submitted to the board within thirty days from the first day of publication.

5. Submission of question to voters at general or special election.

6. If majority of votes are in favor of acceptance of offer, to issue to any person holding warrants of the county, issued prior to the date of first publication of notice, coupon bonds in exchange therefor at par.

8. Bonds to bear interest at eight per cent, payable semi-annually.

9. Bonds to be payable after ten years and within twenty years after date of issue.

10. The amount of bonds not to exceed the sum of the county indebtedness at date of first publication of notice, and the amount *shall* be *determined* by the County Commissioners and a certificate made of the same and made a part of the records of the county, and any bond issued in excess of *said* sum shall be *null and void*.

11. The bonds shall be registered by Auditor.

Now, under the authority of that act; as well as under the authority of the general laws, prescribing the powers and duties of the Board of County Commissioners and herein set forth, it was clearly the duty of the board to audit, settle and allow accounts against the county, and on petition, etc., in case floating debt was more than $10,000, to issue funding bonds, on vote, etc. All accounts against the county must, in the first instance, be presented to the board for allowance, and from its decision an appeal lay to the District Court.

Gen. Laws 1877, Colo., Sec. 464.

There has been at no time any restriction upon allowance of accounts against a county except that found in the Constitution, Article XI. and Section 6, and herein set forth, and that restriction to the contraction of debts by counties was, by its express terms, wholly inoperative as against debts existing or accruing prior to the adoption of the Constitution, July 4, 1876; also, as to all debts contracted by counties having a valuation less than a million dollars. Hence it is clear that the mere statement of a floating indebtedness of any amount, however large, against a county, with a valuation

of more than a million, offered no evidence as to the validity of that debt when its validity is assailable as plaintiff in error, seeks to assail the debt of Chaffee County, because in excess of $6 on each $1,000 of valuation, since *all* of the debt or the larger or lesser portion thereof may have accrued before the adoption of the Constitution or before the valuation reached a million. We have already referred to the fact that Chaffee County first had a being February 8, 1879, and was formed out of Lake County, which existed prior to the State Constitution, and that, on division of counties, Chaffee County was indebted from the start for a suitable proportion of the debt of Lake. So that, in considering the debt of Chaffee County, it is clear that all that portion of the Lake County debt which was valid in 1879, and came to Chaffee by the formation of that county; and all of Chaffee County indebtedness, accruing before such county reached a million in valuation, was a valid, floating indebtedness, and was a debt that could be funded, and was, in no respect, affected by Section 6 of Article XI. of the Constitution. It thus appears and plainly appears that the Board of County Commissioners, when they decided that certain warrants issued prior to 1882 were valid warrants, were deciding a question which, under the General Statutes and the funding statute, it was their duty to determine in the first place, and that the board and the board alone could determine the date of the accrual of the debts, and, consequently, whether they were within or without the operation of the constitutional limitation, and this latter determination is not, as counsel for plaintiffs in error

seem to suppose, an attempt to determine a question of law, but simply a statement and determination that the facts attending the *date* of the accrual of the debt was such as that the limitations of the Constitution did not affect it. It is precisely of the same character of determination as is noticed and expressed by this Court in Dixon vs. Field, 111 U. S., 92, thus: "It is not necessary that the recital should enumerate each particular *fact* essential to the existence of the obligation. A general statement that the bonds have been issued in conformity to law will suffice, so as to embrace every fact which the officers making the statement are authorized to determine and certify. A determination and *statement* as to the whole *series, where more* than one is involved, is a *determination* and certificate as to *each essential particular.*" So, here, this certificate in the bond that "*the total amount of the issue does exceed the limit prescribed by the Constitution*" is but a determination and certificate that the debts, whatever they might be, included in the issue, accrued at such time or in such amounts as they alone could determine, as that by operation of law the constitutional limitation could not apply. This is no more a determination of a law point, nor apparently quite as much so, as a determination that a thing was done in conformity to law, and this statement is one of fact, made upon a determination of other facts, etc., and so this Court has always held.

A word or two now with reference to the answers. The Court will observe that demurrer was not interposed to the *first* answer, though it probably afforded no defense. It was but a general

denial, and was squarely met and refuted by a presentation of the bonds and coupons, the execution of the bonds and coupons not having been denied, and no denial of the plaintiff's ownership and purchase before due. There was nothing either in the answer or the evidence that even tended to disprove the case made by presentation of the coupons and bonds. It will be noticed, also, that the answers admit by its silence the allegation of plaintiff that for three years the defendant county paid interest on all the bonds issued. We further call attention to the fact that the 2d, 3d, 4th, 5th and 6th answers made no defense whatever, under the constitutional limitation, because the averment in each of them go only to the status of the county on date of issue of bonds, while the defense, if defense there was, must have referred to the *status prior* to August 31, 1882, since *all* the debt existing on August 31st had been contracted long before that date. Now, as to the 7th and last plea or answer, it alleges that, on August 31, 1882—date of first publication of notice under act of February 21, 1881—the assessment was $2,667,501, as shown by the assessment rolls of same county, and that the bonds issued by the board on the 1st day of December, 1882, aggregate $121,000, and alleges that the total valid indebtedness of the county, on the 31st of August, 1882, did not exceed $16,005, because, as the plea alleges, it could not exceed that sum on the valuation under the Constitution, but as this refers only to debts within the limit, and as nothing is averred as to *what* was the valuation when debts funded were incurred, it is clear it pleaded no defense, since *non constat*, that *all* and

every dollar of the indebtedness accrued before the county had a valuation of more than a million. The Court below certainly could take judicial notice of the general condition of the county, and that most counties in the State existed many years before they reached a valuation of a million, and even if it could not, it certainly could not, in aid of such a plea, presume, in the absence of any allegation whatever by the defendant, that it did accrue after the county had reached a million in valuation. The defendant was pleading a constitutional section in which there was an exception, and, by all rules of pleading to bring his defense within the rules, he must show it was outside the exception. Hence, the plea afforded no defense. It may be noticed, in this connection, that in counsel for plaintiff in error's argument herein, he insists that the bonds show on their face, through the series and numbers, an issue of 187,000, while the *plea* of the said party says it was but $121,000. A notice so liable to exaggeration as this can hardly be considered a legal one, calling on one who purchases bonds to take notice anything.

In conclusion, we contend that all and every of the recitals in the recital portion of the bond are recitals of fact, ultimate *facts*, resulting from other facts, and no more conclusions of law than is a certificate or recital that an election was duly held, or that bonds were voted, and that the recitals are each and all of facts; that by the law of 1881 it was the officer's duty to determine, and that the facts as to date, etc., of debts could not be ascertained by the purchaser, and he was under no

obligation to look for this. And, lastly, that under the well settled doctrine of this Court, *none* of the answers of defendant made any defense whatever; and, further, that the case of Lake Co. vs. Graham, 130 U. S., 674, has no bearing whatever upon the question here presented, or, if any, then in favor of defendant in error, since in that the case was submitted to this Court on an agreed statement that the debt represented by warrants exchanged for bonds in suit was *incurred after* the limitation prescribed by the Constitution had been reached, which is exactly the thing denied in this case, and about which plaintiff in error, in its plea, said nothing.

We respectfully submit the judgment in this case should be affirmed.

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